IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CRIMINAL APPEAL NO.93/1988
(Narayan Vs. State)

Date of order : July 12 , 2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.P. Saraswat on behalf of
Mr. Sanjay Mathur, for the appellant.
Mr. L.R. Upadhyay, Public Prosecutor.

This criminal appeal is directed against the judgment dated 1.2.1988 passed by Sessions Judge, Dungarpur in Sessions Case No.39/1987 whereby the learned Sessions Judge acquitted all the accused namely Narayan, Kanti @ Kaliya, Bhagu, Ratna and Nana for offence under Sections 148 and 307/149 read with Section 324/149 I.P.C. and granted benefits of probation to accused Kanti @ Kalia while recording the finding of guilt against him and convicting him for offence under Section 323 I.P.C. and the present appellant Narayan was convicted for committing offence under Section 324 I.P.C. and sentenced to one and half year RI along with the fine of Rs.500/-. Further it was ordered that if the amount of fine of Rs.500/- is deposited by accused Narayan, then, injured Banshilal and Nathulal may be paid Rs.150/- each and Mohanlal may be paid Rs.200/- as compensation.

It is contended by the learned counsel for the appellant that as per the prosecution story, on 20.4.1987 at 8.00 a.m. one Ramdeo filed an oral report at Police Station Thambol that his son Gauttamlal and son-in-law Laxmanlal on the preceding night boarded the truck at Thambola. The truck reached at Karawada at 8.30 p.m. On 19.4.1987. There was a 'barat' for village Sasarpur wanted to board the truck. Some of the 'Baraties' asked Gauttamlal and Laxmanlal to get down from the truck. They refused to accept their request. Five accused persons surrounded and attacked all of them. Accused Narayan was armed with knife, Kanti @ Kalia with sword and other accused-persons were armed with lathis. Accused Kanti inflicted sword injury on left leg of Gopal. Bhaggu, Ratna and Nana caused injuries on Laxmanlal. On hearing their cries, Nathulal, Mohanlal and Bansilal arrived there and intervened. Accused Narayan caused knife injuries to the said persons. As per the allegation, other accused persons caught hold of them. After investigation, the police filed challan against accused Narayan for offence under Sections 148, 307, 324 and 323/149 I.P.C. and all other accused persons were charged for offence under Sections 148, 307/149, 324, 149 and 323/149 I.P.C. After trial, accused Kanti was held guilty and convicted for offence under Section 323 I.P.C. and accused-appellant – Narayan was held guilty and convicted for offence under Section 324 I.P.C. All other accused persons were acquitted

from the charges levelled against them. Accused Kanti was granted the benefits of Probation of Offenders Act and the present appellant was convicted and sentenced as aforesaid.

Learned counsel for the appellant contended that the appellant is also entitled to be given the benefits of Probation of Offenders Act under Section 360 Cr.P.C. Learned trial judge has committed an error in not extending the benefits of probation to the appellant without recording any reasons. Therefore, it is prayed that the appellant may be given the benefits of probation under Section 360 Cr.P.C. The appellant is not a previous convict and he was 30 years of age at the time the occurrence took place. The occurrence took place suddenly on the spur of moment and in the facts and circumstances of the case, learned trial court ought to have extended the benefits of probation under Section 360 Cr.P.C. because all other accused persons were acquitted except the present appellant and accused Kanti, who was also given the benefits of Probation of Offenders Act though he was held guilty for committing offence under Section 323 I.P.C.

Learned Public Prosecutor opposed the prayer made by the learned counsel for the appellant and contended that the prosecution has proved its case beyond reasonable doubt and looking to the number of injuries inflicted by accused Narayan, he was not

granted the benefits of Probation of Offenders Act.

I have heard learned counsel for the appellant as well as learned Public Prosecutor and perused the judgment and scrutinized the evidence on record. In my opinion, the trial court has rightly recorded the finding of guilt against the appellant for offence under Section 324 I.P.C. and convicted and sentenced him as aforesaid. The occurrence took place in the year 1987 and the appeal is pending before this Court since 1988. Thus, near-about 18 years have elapsed.

Looking to the facts and circumstances of the case in the interest of justice, while maintaining the conviction of appellant under Section 324 I.P.C., the sentence awarded to the appellant is, however, reduced to already undergone by him. The appellant is on bail. His bail bonds are discharged. However, the amount of fine is enhanced from Rs.500/- to Rs.2,000/-, out of which, injured Banshilal and Nathulal shall be paid Rs.600/- each and Rs.800/- shall be paid to Mohanlal.

With the aforesaid modifications and directions, the appeal stands partly allowed.

(GOPAL KRISHAN VYAS), J.

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